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Facing the Storm: The closing of a great firm

By

Paula R. Marshall

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So either it's about money, in which case I'm being woefully underpaid because we're not doing very well, or it's about excellence in practice, in which case we're not aspiring to that anymore. And either way it's not right.

Long time partner at Hill & Barlow

Jeff Solomon, Series Editor
GoodWork® Project
Harvard University

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Prologue

On December 7, 2002, Hill and Barlow, a distinguished law firm, (hereafter referred to as H&B) abruptly ended its 107 years of practice. That this law firm steeped in civic pride and professional excellence was relegated in short order to an historical icon was as much a shock to many inside the firm as it was to outsiders who had admired H&B's professional reputation.

Since the firm's founding in 1899 (Hill started his practice in 1895; the firm celebrated its 100 year anniversary in 1995), H&B boasted a long line of public servants of both Democratic and Republican persuasions. In the 1920s, Arthur Hill appealed the guilty verdicts of Nicola Sacco and Bartolomeo Vanzetti. During the peak of the McCarthy era in the early '50s, John Saltonstall and Calvin Bartlett took cases in defense of individuals accused by McCarthy's House on UnAmerican Activities when other firms and lawyers refused to do so. At various times, the firm's ranks included three governors, Endicott Peabody, Michael Dukakis, and William Weld, along with Robert Mueller, director of the FBI. H&B, however, was not protected by its cloak of nobility. While the historical value of this firm was never denied by any of those we interviewed, the past was not the H&B of 2002 nor was it the H&B of 1990. For an institution to survive the changes in the economy and the practice of law, the collective goals and values of the H&B veterans and young partners needed to be in synch; they were not.

Upon closer examination, the collapse of H&B initiated by the 23 lawyers who announced their departure on December 6 was the story of a "perfect storm," a complex set of events put into motion several years before the real estate group had decided to leave. As the storm brewed, the ethos of the firm shifted, alliances were made, and loyalties reconfigured. H&B became a firm faced with discordant expectations: some partners had zealous aspirations and an eagerness for greater profits, others had a deep disappointment in the changing goals of the firm, and an inclination towards passivity in communicating that dissatisfaction. As a result, the partnership began to crumble. The loss for those whose professional and personal lives were for many years intertwined was sad; for the lawyers who had been hired recently from other firms (lateral hires), the dissolution represented an abdication of promises and partnership obligations.

In this paper I examine the significance of the dissolution of H&B and what it tells us about partnerships in light of commercialization, compensation, and competition.

The Study

My entry point into this case study is the on-going research study of the GoodWork Project at the Harvard Graduate School of Education. Good work, as defined by our project, includes two criteria: work that is high quality and work that is socially responsible. We have been particularly interested in how good work gets accomplished in an era of rapid technological change and virtually unmitigated market forces. Since 1995, we have conducted over 1000 in-depth interviews with professionals in journalism, genetics, business, social entrepreneurship, theater arts, medicine, philanthropy and law. We sought to identify the key issues, pressures, and opportunities faced by leaders and innovators in these professions and to understand what values, goals, and principles informed their work. Thus far, three books have been published: *GoodWork: When Excellence and Ethics Meet* (comparing and contrasting professionals in journalism and genetics); *Making Good: How Young People Cope With Moral Dilemmas at Work*, *Good Business: Leadership, Flow, and the Making of Meaning*, and *Bringing in a New Era of Character Education*. On our website (www.goodworkproject.org), we catalogue articles and scholarly papers written about “good work” using data from our studies.

Our inquiry into law was focused on four subdomains: “cyberlaw”, criminal law, mergers and acquisitions, and small town law. Through a nomination process we interviewed 74 exemplary law professionals exploring the values, goals, and principles that informed their work and, as we did with other professionals, the obstacles and challenges that made it difficult to accomplish those goals. At the time, we were not anticipating a case study of a firm. When the demise of Hill and Barlow became front-page news, an event that was being mirrored by other law firms throughout the country, we felt it was an opportunity to examine an institution and the issues affecting its practice. Further, it seemed to mesh with our interest in what we call “compromised work” (forthcoming, H. Gardner.), meaning work that is not illegal per se, but whose quality undermines the ethical core of a professional’s work.

Since we are not investigative journalists, our interest was to get the perspectives of different players at H&B. With the exception of one group, this mission was easily accomplished. In this paper, we report what we have learned and then combine our own judgments about what happened. In light of the sometimes conflicting testimony and our understanding of the broader landscape of law and other professions in the US over the last 30 years or so, a complex story unfolded—a story of multiple changes within the profession, and shifts in the way these professionals saw themselves and their peers.

Partnerships: the stewards of an institution

The bedrock of most law firms consists of individuals who share a common enterprise—law. Though it was never easy to become a partner, once achieved, it was like marriage—a lifetime commitment in which the clients belonged to the firm and the compensation for work was arranged by an agreed upon formula.¹ Through the '70s, “there was not a significant split in a Wall Street [law firm]...Lawyers were locked in by client loyalties to firms, by the hard-to-reproduce advantages of the institutional setting, and by the value of firm connections.”²

Achieving partner was not only a strong reward but it meant tenured security and a steady increase in earnings. In order to establish a partnership, however, the firm had to 1) bring in sufficient monies to support the salaries deemed acceptable, 2) afford to rent office space and pay overhead, 3) hire support staff that help complete the work with quality and efficiency, 4) bring in sufficient amounts of work to keep the juniors of the firm busy, and 5) have common understandings among colleagues that supported their mutual purposes. As a consequence, partners were chosen not only for proficiency, hard work, and the ability to relate to clients, but also for the potential to attract business. Remaining financially viable and being a good professional was a necessity to the survival of this type of collective enterprise.

¹ Galanter, Marc, Thomas Palay. *Tournament of Lawyers*, University of Chicago Press, Chicago, ILL(1991) p. 2

² Galanter, Marc, Thomas Palay. *Tournament of Lawyers*, University of Chicago Press, Chicago, ILL(1991) p. 24

Until the late '80s and early '90s, the relationships among law partners remained stable. There may have been partners who left firms to hold public office, to teach, or to start their own practices, but rarely, if ever, did partners leave their firm for higher salaries; rarely did firms recruit or pirate partners from other law firms. Loyalty and collegial inspiration kept firms in a collective community as they weathered the economic winds of fortune. Partnership expectations, however, were to change drastically in the late '80s and '90s. The landscape is replete with casualties. In 1987 Peterson Ross, a 92 year-old company with 175 lawyers and Chicago's 12th largest firm, was quietly surprised by the departure of 17 partners. In November, 2002, Hitchins Wheeler & Ditmar PC, founded in Boston in 1844, merged with Nixon Peabody LLP (founded in 1854) after Ditmar left with three associates for Goodwin Proctor LLP in November 2002. And in July, 2004 Goodwin Proctor merged with Shea & Gardner. Similar stories can be told about New York, Chicago, Texas, and California firms.

According to Altman Weil (1997-2000), "Law firms continually struggle to define the obligations of partners. This effort is exacerbated as the rules of the game have changed in the legal profession."³ What accounts for these changes? Based on the data we have collected, I submit there are three major factors at work: commercialization, compensation, and competition. These economic changes have affected not just the state of partnerships but also the various motivations to practice law. H&B teetered and failed its partnership obligations as a majority of the practitioners chose to compete based on greater profit instead of a practice guided by loftier ideals.

Trends influencing the practice of law: commercialization, compensation, competition

Commercialization

Law and business have been tugging at each other for at least a century. Louis Brandeis stated in 1905 that "lawyers are now to a greater extent than formerly business men, a part of the great organized system of industrial and financial enterprise".⁴ In 1910, a New York judicial statement argued against the formation of a corporation to practice law

³ Clay, Thomas consultant for Altman Weil, "What are the obligations of partners?", 1997-2000

because the practice of law was “not a business open to all, but a personal right, limited to a few persons of good moral character, with special qualifications ascertained and certified after a long course of study... The bar, which is an institution of the highest usefulness and standing, would be degraded if even its humblest member became subject to the orders of a money making corporation...⁵ And in 2003, the Massachusetts Bar Association convened a task force to “define the practice of law” because the association feared that the practice was transforming into something entirely unsatisfactory for those both practicing law and recipients of its expertise.

As economic forces place unprecedented pressures on the professions in general, and on the legal profession in particular, this trend has influenced the delicate balance between the business of law and the priorities of those who practice it. Corporate practices have increased, firms have merged into mega-firms with national and international identities. Lawyers advertise and market their services as would any business enterprise competing within the marketplace; legal partnerships have become secondary to individual gain; and client satisfaction and salary compensation has heated up the competition among law firms. As legal consultants at Altman Weil noted, “the bar has been raised and it will not be lowered”⁶ The changes have mounted a force from which few are immune.

To be or not to be incorporated

In 1961, lawyers were given the green light to become fully incorporated and to enjoy the fringe, tax benefits available to employees of a corporation.⁷ “Incorporation provided access to up-to-date business methods, standardization of certain types of legal work, substantial business responsibility and wide connections and experiences.”⁸ Law partnerships morphed into professional corporations, which limited personal liability for the debts of the organization and for the malpractice of one’s partners; the title “partner” was legally replaced by “member” or “director” of the corporation. Most lawyers saw

⁴ Caplan, Lincoln, *Skadden*, Farrar Straus Giroux, 1993 p.127

⁵ Massachusetts Bar Association, *Lawyers Journal*, “Task force to consider defining practice of law”, December 2003, p. 8

⁶ Altman Weil, Inc., Thomas Clay, “What are the obligations of partners?”, 2004.

⁷ American Bar Association, Glenn Greenwood, No. 28: Ethical Problems Raised By The Association and Corporation of Lawyers, November, 1961.

⁸ *Ibid*, p.5

this change as a positive direction for the profession. Some, however, felt it would be detrimental because it would compromise the profession's integrity.

H&B was incorporated in the early 1990s. Only one partner with whom we spoke indicated that there was some concern that the incorporation would influence the partnership. Others denied that there was any cause for concern, and that indeed, the incorporation did not substantially change anything about the firm except that their official title was directors or members of a corporation rather than partners.

The little ad that could

In 1977, the profession moved even further away from its traditional practice-centered to business-centered mindset. Lawyers were given a green light to use advertising as a marketing tool. Many solo practitioners and law firms use the Yellow Pages, but most large law firms hire marketing experts to gain the advantage over other law firms. Interestingly, many lawyers with whom we spoke saw advertising on a continuum of bad to worse; the corporate lawyers felt that advertising in the Yellow Pages was abhorrent, but that creating a glossy brochure for clients was acceptable and not perceived in a similar vein to advertising.

The National Law Journal's article in the Sept 25, 2002 issue claims that advertising, "The Little Ad That Changed Everything", was the "revolution that changed the legal profession to a service-oriented business requiring the same marketing, investment, cost control and production systems" as other businesses.

Big may be good, but is it better?

As corporate structures became more complex, law firms began to evolve in parallel. In the early days practices were relatively small. In 1872, there were only 17 law firms with four or more lawyers; in 1903 the number of law firms grew to 203; in 1914 to 445; in 1924 to well over 1000.⁹ In 2002, there were nearly 10,000 law firms with 10 or more lawyers.¹⁰ Large offices were thought to have "the greatest efficiency for the clients and

⁹ Galanter, Marc, Thomas Palay. *Tournament of Lawyers*, University of Chicago Press, Chicago, ILL(1991) p. 14

¹⁰ Martindale Hubble Law Survey

the greatest pecuniary success to the individual members....”¹¹ As firms merged and grew, and legal practices diversified, they became even more dependent on their business clients and those clients were drawn from all over the world. The expanding global economy continued to spawn multi-national firms, and size became synonymous with service to a broad spectrum of clients. In 2001, Skadden Arps Slate Meagher & Flom declared that their firm of 1332 lawyers was the first to gross more than one billion dollars.¹² In 2003, Skadden boasted a roll call of 1800. In 1999, Baltimore’s Piper & Marbury merged with Chicago’s Rudnick & Wolf forming an 800-lawyer national law firm. Three years later Piper Rudnick picked up the real estate group from Hill & Barlow to establish an office in Boston. According to Elliot Surkin, Piper Rudnick’s managing partner and former chair of the real estate group at H&B, “the firm’s [Piper Rudnick] strategy is to develop the most prominent national real estate practice of any law firm.”¹³

The prevailing wisdom on size, however, is mixed. Some firms believe in quality over size; many believe that both are necessary to meet a client’s diverse needs. How growth is initiated, the leadership of the firm, the expectations of the partners, and the depth of diverse talents within the firm all contribute to its success. As Surkin stated in a “Lawyers Weekly” article, “an organization has to anticipate instead of merely react...the traditional role of managing partner in the old days was to be a caretaker and a successful lawyer. This has no relationship to being a business leader.” His statement as managing partner of the Boston office of Piper Rudnick echos the struggles of his old firm. By 2000, H&B teetered as it reacted to what it thought it “should” be, which was a more competitively profitable and diverse organization. Unfortunately, leadership and a common vision among the partners was absent; the ability to correct its course in the wake of the firm’s subsequent financial difficulties was also inadequate.

Compensation

When is enough, enough?

Until the late 1960s, compensation was a confidential topic discussed only behind closed doors among the specific partners responsible for setting such policies. Not even those

¹¹ Ibid, p. 13

¹² Internet article, CJA, *Law is big business*; www.judicialaccountability.org/baraccountability6.htm

inside the same firm knew the salary base of another partner. It was a taboo topic for associates to discuss salaries with each other or for one firm to know the salary structure of another firm. Only recently have law firms publically disclosed their profits and partner compensations. Now that salaries and the gross earnings within firms have become public knowledge, these data are often used as bait to lure lawyers away from their firms. This tactic works.

Clearly, not all firms share the same values. For example, law firms may place different emphases on earnings. When seeking employment, a lawyer will look for a firm in which he/she can feel aligned with the value preferences of that firm. If a law firm's priority is expressed in terms of net income per partner, excellent service to clients and as a secondary persuasion, collegiality within the institution, it will likely be attractive to a lawyer who shares such values. If, on the other hand, a firm suggests that its priorities are excellence, collegiality, public service, and quality of life first, with earnings as secondary, then lawyers who share these values will be drawn to that firm.

As one interviewee explained:

If lawyers want to be in a place because of the shared values and commitment to practice and commitment to excellence, the money is a nice bonus, but it's not what it's about. If lawyers are choosing to be in a place because of how much money they make, and willing to choose to leave a place because it's not doing so well, it's no longer true that you're practicing law together because you have a shared commitment to excellence and practice.

All those with whom we spoke stated that lawyers who chose to work at H&B were well aware that it did not offer the highest salaries, that quality was its badge of honor, and that quality of life and conviviality were important aspects of its work environment. Rewards in terms of compensation were important, but had never been the firm's priority.

Formula: payment by the firm

How compensation is determined plays a role in how partners see themselves, each other, and their relationships to other law firms. There are a variety of compensation systems from which to choose. In the '60s and '70s, the most common was the democratic

¹³ Sender, Jane, "The 850+ Lawyer firm in Boston: How did it happen?", Lawyers Weekly, March 2003

system, i.e. the lock step, in which equal distribution of the profits are divided according to seniority or experience groups. The advantage to this system is that it reduces or at least minimizes internal competitiveness and arguments over who earns what in relation to others. Competition is directed outward rather than internally, minimizing individualism, promoting the importance of the firm, and encouraging a team approach to client services.¹⁴ However, most Boston firms moved away from this system of compensation when lawyers became more mobile and young super stars expected to be rewarded by the profits of the firm.

Another approach is the formula system or point and percentage system. Often called “eat what you kill”, this approach formulates percentages on the work that the partner originates and the value of the hours billed. A partner’s profits are weighted based on origination of work (OA), responsibility for client matters (RA), and hours worked (WA). The value placed on OA and RA encouraged the lawyer to develop his or her own practice. This system typically does not measure the intangible contributions to the firm such as training other lawyers, hiring and supervising junior partners, etc. Rather it encourages lawyers to develop their individual practices.¹⁵ And as individualism becomes more prominent there is a decline in a sense of collective responsibility.¹⁶ Compensation committees, managers or management committees often have the responsibilities for setting the criteria that determines the distribution of profits.

From 1965 until 1999, H&B used the formula system administered by an autonomous compensation committee. Origination (OA) and responsibility for work (RA) were coveted and a few high producing partners benefited from their vigorous practice. In the mid `80s, the firm attempted to minimize the disparity between the top producing partners from the bottom by taking out 20% of the profit and distributing it as rewards for service or for need. In the `90s, additional compensation was distributed based on one’s contribution to the firm, i.e. managing partner role etc. Whatever portion of the 20% was not allocated by need or service was equally distributed among the partners. As the

¹⁴ Murdick, Howard L., “Partner Compensation”, The CPA Journal Online, July 1990

¹⁵ Ibid p.3

¹⁶ Bellah, Robert N., Richard Madsen, William Sullivan, Ann Swidler, and Steven M. Tipton, *Habits of the Heart*, University of California Press, Berkley CA, 1996 p.xxv

partnership unraveled, the compensation formula became a disincentive to feel connected to something larger. In the words of a partner who left a year before H&B folded, “it rewarded behavior that was inconsistent with collective action.”

In 1999, the firm adopted a judgment system of compensation. The management committee became fully responsible for distributing the profits, and decisions regarding distribution were made in advance and paid at the beginning of the year rather than a calculation of a three year average paid in December. In the words of one partner “this system caused more heartache.” It required an understanding of the past records of the various partners, and a record system that was not yet in place.

Billable hour: payment by the client

Until the '60s, the amount of time spent on a case was always a factor when a lawyer computed his bill, but it was not the most significant factor. The novelty and difficulty of the question, the time limits imposed by the client, the nature and length of the professional relationship, and the experience, skill and reputation of the lawyer all determined what a reasonable fee might be. In the '60s, the billable hour came of age as an economic model. Law firm consultants advocated for this model because accurate records and billing by the hour made more money for the lawyer. Hourly billing made the billing rate the primary factor for clients as well. Also, due to an increased competition among lawyers and economic fluctuations, many lawyers could not increase their rates enough to cover increased expenses so the number of billable hours worked had to be increased.¹⁷ Fundamentally the practice of law was becoming about quantity rather than quality with few gauges for intangibles such as productivity, creativity, or knowledge. The billable hour was the single most important element in soaring incomes.

This issue became a major agenda item at the American Bar Association. The ABA initiated a serious debate on the ways in which billable hours have “diminished [the] profession”. The advocates for this billing preference suggest its simplicity, familiarity,

¹⁷ ABA commission on Billable Hours Report, 2001-2002

profitability, efficiency and amiability within and among partners in the firm. ¹⁸ The ABA, and most notably The Honorable Stephen G. Breyer, stated that:

treadmill pressure is partly financial: law firm salaries have grown exponentially...but the pressure also reflects the increased complexity and specialization of law itself along with growing demands by clients for a precise accounting of the services for which they pay...the ABA committee's task is not just [to explore a] better or more efficient way to run a law firm. It is concerned with how to create a life within the firm that permits lawyers, particularly young lawyers, to lead lives in which there is time for family, for career, and for the community.

According to the Florida Supreme Court's Commission on Professionalism, no longer are lawyers judged by the highest principles for which they stand. Rather lawyers are evaluated for whether they are rainmakers, how many billable hours they produce and how much profit they bring to a firm.

At H&B, economics and compensation became the focal point for dissatisfactions and frustrations. And while H&B's reputation was born by the strength of its litigation department, in the late '80s and '90s, the real estate group became the firm's most lucrative practice; many in that department felt they were like Sisyphus, trying to maintain the firm's economic viability while other departments were billing less. This was a root disagreement among those we interviewed. Several of the partners we spoke with recognized the ebb and flow of practices and felt that the litigation department carried the firm for many years and that the real estate group was being greedy. The real estate group disagreed with this assessment.

Competition

Compensation and competition are two sides of the same coin. Our choice of work or profession is usually based on the rewards we expect to receive from the effort we expend. It works best when we choose work that satisfies, challenges, inspires our passions, and supports our dreams for doing good, not just for earning a living. In fact, many of our law subjects spoke about entering the law because they wanted to do something to improve society. As competition in the practice of law on both the

¹⁸ ABA Commission on Billable Hours Report 2001-2002

individual and institutional levels escalated, expectations focused on the tangible rewards as many competed on the basis of earning power. Greater earning capacity has become the trading coin of this new era.

More lawyers

On an individual level, there are simply more lawyers being trained and more entering an already overburdened job market. According to the American Bar Association, in 2003 there were 187 law schools conferring law degrees and a total of 137,676 JD enrollments. In 1995, the American Bar Foundation pegged the number of lawyers in the United States at 896,000. More recently, estimates bring the number to approximately 1,000,000 lawyers. As law firms jockey to pay the highest salaries to the most promising recent graduates, not only do the firm's expenses increase but the expectations of those entering the profession become skewed to profit rather than to the value of service.

This type of competition affects the public service role that lawyers traditionally have played in society and for which H&B was noted. As discretionary time of the practitioner has decreased, the toll on pro bono work has increased. As billable hours have increased, time spent with family and personal relationships as well as involvement in one's community has decreased.

Who gets to hire the best and the brightest?

On an institutional level, firms are competing for corporate clients and the best associates to do the work. In order to capture the market in both areas, the veneer of success is added to the mix: an upscale office location, increasingly high overhead costs, and so on. And as these ingredients are added, the need for greater profits is reinforced.

As law firms grow, expenses increase, the number of billable hours increases, and competition for compensation increase. The competition among firms to capture the law graduates with the best credentials becomes associated with the highest earnings, although not everyone agrees with this equation. Some lawyers desire much more than a large pay check, focusing on the quality of their practice, the professional responsibility that comes with being a lawyer, and the willingness or preference to keep the profit

incentive as a secondary motivation. But in general, most observers agree the profession has become dominated by business motives.

In the old H&B, service to society dominated the mindset and there was some degree of comfort in not being the top-earning firm in the city. H&B sought to inspire associates and partners to serve the public good. In the H&B of the '90s, reducing the gap in salary ranges between H&B and the top law firms became one of the major goals. Indeed, there were partners who left for higher salaries even before the real estate group decided to leave. Many partners felt that the firm needed to compete in order to get the kinds of clients and partners that would keep the institution alive. Not all partners agreed with this assessment. Some felt that the soul of H&B was in its commitment to the practice of law per se, not to the business of making the most money. These two conflicting perspectives clashed repeatedly.

Hill and Barlow on a tightrope

Professions are infused with specific knowledge, rules, and standards that guide members. The rules are created to help professionals focus their attentions on, and reinforce, the intended goals of the domain, and to assure ethical practices in their work. Partnerships and intellectual communities vary depending on the type of profession and the personalities that gravitate to that work. A partnership depends on the expectations of the individuals and the personalities that are involved.

The partners of H&B throughout the years revered the banner under which they practiced: trust, fairness, high standards, civic responsibility, enjoyment of the practice of law and quality of services rendered. But the firm also represented the emblematic changes, the disparities and the fractures that were pervading law. In the early days, the established culture of H&B depended on the partners and their relationships with not only one another but with their associates and staffs. The partners we interviewed shared these notions, but they also saw these sentiments slowly change over time. Although those outside the firm perceived H&B's reputation as alive and well, a veil of uncertainty began to permeate the institution itself.

A brief look at H&B's history offers a perspective on the firm and the goals the partners intended to carry forward. The firm's historical nomenclature as transcribed by Fanueil Adams and John Kahn in their 1976 narrative¹⁹ suggests a professional community of contrasts and harmonies with unanimity of pride in their work.

A seed grows in Boston

The story begins with a Harvard Law School graduate, Arthur Hill (class of 1891) who practiced alone for several years until he joined forces in 1899 with Robert Homans and Robert Barlow. From the start, the character of this firm was infused with Hill's leadership and sense of civic duty. Hill was the emblem of the lawyer statesman²⁰ and was never one to take the easy route. He felt best when standing up for his beliefs regardless of their popularity. He supported the nomination of Louis Brandeis for Supreme Court Justice when many were bitterly opposed to it; and in the 1920s, he was one of the attorneys for Sacco and Vanzetti's appellate trials. While Hill's partners did not always agree with the positions he took, they were always willing to accept and support him; as a team, they were a force with which to be reckoned.

After Hill's death the firm continued the tradition of representing many causes and individuals regardless of a case's popularity or an individual's ability to pay. By 1965, the general practice of Hill Barlow Goodale & Adams had 11 partners and 7-8 associates. The practice included some corporate, probate, real estate, and business law. When associates left, it was usually to practice law in other states, to teach law, or to become more active in government.

A partnership forged

In 1965, Hill Barlow Goodale & Adams merged with Peabody Koufman & Brewer and changed the firm name to Hill & Barlow. This merger was the first in Boston in 30 years, creating a firm of 31 lawyers, one of the largest in the city at that time. While mergers are not always successful, this one was a merger of smart, like-minded lawyers, although

¹⁹ Adams, Fanueil, and John M. Kahn, *Antecedents of Hill and Barlow: An informal history*. Hill and Barlow, 1976.

²⁰ Kronman, Anthony, *The Lost Lawyer*, The Belknap Press of Harvard University, Cambridge, MA 1993

with different styles—the more traditional, old-world Hill Barlow Goodale & Adams and the more aggressive and youthful Peabody Koufman & Brewer.

Peabody Koufman & Brewer: the pirates

The firm of Peabody Koufman & Brewer had opened offices in 1952 with partners Endicott (Chub) Peabody, Joseph Koufman, and William Brewer. By 1956, Peabody decided to run for Attorney General but worried about the huge mortgage incurred by the new office space and renovation, stating that “it was not as easy to reconcile one partner going off and campaigning every two years.”²¹ But his partners were proud of his civic-minded interests and agreed to continue to support him. The young partners of this firm (the oldest of the group under 40 years of age at the time of the merger) prided themselves in working as a team and hired and trained lawyers who “had the capacity and willingness to assume responsibility early...there was no line of demarcation between partners and associates on the letterhead”. A partner we interviewed described H&B when he was a young partner as, “...young people hustling, right out of the service. What [else could] we do?...”

Frank Goodale from Hill Barlow Goodale and Adams commented that: “[he felt] like the captain of a cargo ship which [had] just been boarded by pirates.” A partner from Peabody Koufman and Brewer claimed this distinction in a different way:

Peabody, Koufman & Brewer was a hungry firm, aggressive, starting out trying to get business. Hill Barlow was your traditional firm. I can best describe it by saying I was there a couple of weeks and I didn’t get a paycheck. We got them faithfully every two weeks at Peabody, Koufman & Brewer. And I said to the in-house accountant, office manager, a jack of all trades, “When do you pay people?” He said, “Whenever I find the time, I write checks. But listen, you’re new. I’m going to get you a check today. So no problem.” That’s the way they did it.

Despite the different cultures, the merger between these two teams was successful. Each firm shared standards of excellence, a sense of civic responsibility, a desire to do something good in the world, and an intrinsic enjoyment for the practice of law. Not coincidental was their loyalty to both the institution and to their colleagues. H&B

²¹Adams, Faneuil, and John M. Kahn, *Antecedents of Hill and Barlow: An Informal History*. Hill and Barlow, 1976, p. 57

became renowned for its litigation department. As mega- national and international firms propagated in the `90s, and specialization in the law became accepted practice, H&B resisted these forces.

John Kahn summed up his recollections of Peabody Koufman & Brewer:

What remains with me most vividly is the impression of the practice of law as a joint effort. Partners and associated were very conscious that there was something more to a law firm than five or six or seven or ten lawyers under the same roof. They were consciously attempting to build a firm that would be something more than a place to earn a living. They were sensitive to the importance of allowing leeway for individual achievement but within limits which would not destroy the mutual interests of their relationship...they relied on each other's strengths and most times felt privileged to be able to respond to each other's needs.²²

While Kahn was an "old timer", one younger H&B partner aptly described a similar brand of partnership:

When somebody becomes a partner in a law firm, the people who already have developed businesses have an obligation to help those people develop the kind of practice that will nurture them and give the associates the same opportunity... If you can have generations of people committed to each other and to the work, it's really a spectacular opportunity to learn and to grow. But if you lose that—if any piece of that falls apart— it's very fragile.

One partner noted a similar "ideal" but said "the reality at H&B was often different". in particular, a partner was not inclined to give away work to another partner if it meant giving up one's RA.

The H&B partnership was often equated to tenured professorships—this characterization entailed a recognition of the academic interest, tutelage and mentorship that fostered professional development among associates. As another partner exclaimed:

Hill & Barlow was more like a university than it was a law firm. There was a very high level of academic interest there.

Most of the lawyers at H&B expressed this in various ways, but their actions came to contradict the assumption of this responsibility.

²² Adams, Faneuil, and John M. Kahn, *Antecedents of Hill and Barlow: An Informal History*. Hill and Barlow, 1976, p. 75

Cracks in the hull

From the outside, H&B was still the law firm endowed with the distinctions from the giants of the past, but H&B had in fact been changing. At least six issues began to shift the priorities of the institution: corporatization, size, compensation, competition, communication, and leadership.

Commercialization: from partnership to membership

H&B had changed to a professional corporation in the early 90s. When asked if this change influenced the relationships in the firm, most interviewed said that the only thing it changed was the title from partner to member—and most stated that it meant little to the larger picture. Indeed, by 1990 most of the partners were in agreement with the decision to form a professional corporation, but at least one was decidedly against it. Apparently he felt that incorporating could be problematic and might somehow detract from the role of partner. He talked to others, and it is through a colleague that this partner's conversation was relayed to us:

[he] talked about being partners, and it had a sort of semi-mystical quality; they didn't want to become a professional corporation because it diminished the sense of being partners. I never knew what the hell that meant.

Of course, hindsight is masterful, but the issue raised by the partner who was not comfortable with the incorporation, while not shared by many, was emblematic of the changes in general and the weight now being put on the profession to become more business and bottom-line oriented.

Size and location make a difference: redefining a community

Also in the '90s, H&B had grown to 123 lawyers and was considered mid-sized but still quite large for this kind of firm. With size came the need for greater organization and communication. In the mid '90s, the firm rented more floors, which further segregated one practice from another. The entire litigation practice was on the 19th floor; the trust and estates practice and real estate group were on the 21st floor. At some point in 2000, the trust and estate practice was moved to the 14th floor; and the real estate group remained on the 21st floor. The location imposed its own demographics. A former partner commented on this change:

I would say the culture of the firm began to change in the late '80s and early '90s. Part of it was that the firm had gotten larger; the intimacy of a small organization no longer exists as an organization gets larger. And, as trivial as this sounds, part of that is because the space occupied by the people gets spread out so that when you're all in one place and bumping into each other all day long, you identify with the entire group and then suddenly when you're on two floors or more of a building and there are people you don't see sometimes for months at a time, your sense of loyalty begins to change or begins to change to the group you're with.

Who people saw each day and with whom they interacted slowly challenged the boundaries of loyalty among the partners and associates. In a sense, the institution had become Balkanized, with social relationships and loyalties reconfiguring around work groups rather than the institution as a whole. One partner acknowledges this loss:

first you lament that [change]. Then you realize that it's no longer the group that you relate to, the whole firm is no longer the group you relate to. You lament that for a while when you have a history of having related to the whole firm. Then you begin to relate to a group either that you work with or that just has sort of geographic proximity to you.

Another partner describes the size of the firm in terms of a business in which the concerns, responsibilities, and common interests are diminished due to size:

There is a movement from a bunch of folks sort of doing something together, which comes out of a small enterprise, and the sense of being co-owners and sharing the responsibility and sharing the concern. I think [it] diminishes as something gets larger and certainly diminishes when you have a compensation system like the formula compensation.

Compensation rules

Since 1965, H&B distributed profits and earnings based on the formula system. In the mid-'70s-early '80s, the firm decided to adjust the formula so there was less of an earning gap, and was thus more compassionate and fair among all the partners. The firm set aside approximately 20 percent as a means of mitigating the effects of the formula with a small portion of the 20 percent going for awards i.e. if a partner was sick or if a partner did additional work on the management and the balance divided equally among the partners. The remaining 80 percent of the profits was distributed based on origination of work (OA), responsibility for client matters (RA), and hours worked (WA). Up until 1999, an independent compensation committee administered the formula and the award. The formula system started to become problematic. As one partner describes:

...another subject that became more and more important and more and more visible within the firm was the compensation system. The compensation system was a system that was heavily weighted towards bringing in business and having a big number of people working under you. The rewards to partners [had] no relationship to actions furthering the good of the enterprise, they were all actions that in some way or another would be taken to further the good of the individual in this internally competitive struggle. By the early '90s most other firms that had run...a formula-based compensation system got rid of it.

In the '70s and '80s, as law firms increased in size and practices became larger and more complex, there was less work being done by individual attorneys and more done by teams of attorneys. As a result, the formula compensation was not representing the true nature of the work distribution and continued to reinforce the importance of individual earnings, to amass the most OA and RA. For example, in 1975, H&B instituted a sabbatical system, in which a partner could take a leave for six months. Only a small number of attorneys had taken advantage of this. According to a former managing partner, the pressure on individual attorneys became apparent in the mid-'80s when the partners stopped taking leaves because they were fearful of losing their clients to other partners, which would impact on their RA..

In 1996 Dan Taylor became the managing chair of the management committee. In 1999, at the end of his tenure, the management committee was given the responsibility for distribution of profits, and two partners outside the management committee were added to give a sense of balance and equanimity to the decisions. In addition, the committee ended the formula compensation system. As one partner explained:

a judgment system [was established] in an effort to do things like reward contribution to the firm that wasn't clearly economic, in an effort to make sure that we could respond to changing economic conditions so that if we had a bad year, we could insulate people toward the bottom of the scale more than people toward the top of the scale. And in order, also, to make it possible to push people to develop new areas of expertise.

Along with this approach, instead of basing the distribution of profits on end-of-the-year shares, the profits were set at the beginning of the year. This meant that the management committee had to know with whom people were working, and have a system in place to capture the information required to make such decisions. Although it would have taken

several years to work out this new approach, it had a short life given the firm's imminent demise.

We asked a partner about his "new" firm's approach to compensation:

[they] figured out how to emphasize commitment to the firm, and how they pay people [is] better at exhibiting traits that look like commitment to the firm.

Competition: finding the balance of business and practice

While earning a good living was important, it was reiterated frequently "that money was never the primary focus for the partnership [at H&B]". However, yesteryear's salaries were not equivalent to the salaries of 2002. A top litigator and senior partner at H&B reported that in 1959 he earned \$4000 a year, and his teacher wife-to-be earned \$4500. He felt fortunate to be doing what he loved at H&B: Hale Andrews, another partner, was thrilled at his starting salary of \$14,000 in 1975. The practice of law was not necessarily a means towards wealth but rather a profession with stability, purpose, and an honorable way to make a living.

The 1980s and '90s in Boston brought significantly higher salaries. As one partner reported, "By the end of the '90s per partner at Bingham Dana earned \$850,000; per partner at H&B was somewhere in the very low threes." The disparity in profits between the large Boston firms like Goodwin Proctor, Hale & Dorr, Ropes & Gray as compared with H&B became articulated, and as that happened, some partners at H&B, not just the real estate group, began to express concern. Expectations among the partners were differentiating. Some disagreed with the business line of reasoning and thought H&B was "losing its soul" meaning that the focus on profit was overwhelming the values of the firm; and some agreed with the necessity to compete with the highest paying law firms. Although H&B was less beholden to the bottom line than were other Boston firms, many at the firm began to acknowledge that the profit per partner was not only an enticement to bring in clients, but also an incentive to keep partners at the firm who might be desirous of higher salaries. One real estate lawyer iterated that in order to hire the best and the brightest young lawyers who were surveying the field for jobs, H&B had to become more competitive. That argument was to win favor with many of the partners.

Communication and trust: who talks, who balks, who walks

The fault lines became apparent as financial issues arose in the late '90s. Instead of sharing their frustrations at meetings, or bringing suggestions to the table, according to one partner “they [the partners] were remarkably passive. And I don’t understand why.” Another partner noted: “all sorts of levels of battles were going on, none of which were being discussed.” Partners described the firm’s communication in relationship to those in power: “The politics of the partnership were so dominated by historic control of work, it really was one group of people making a decision and everybody else saying yes”. These statements were corroborated by all those with whom we spoke.

In 1996, a former senior partner reproached himself for not being a stronger counter-force to the dissatisfactions and changes in the firm; instead, he opted to remain silent and became an ear for the discontented partners, encouraging others to speak out, and expecting his partners to be more assertive. He opined that the passivity of his partners took its full toll on the firm. A partnership requires input from all constituents in order for it to stay on the right track. Without conversation, decisions are made in a vacuum and can not be representative of the stakeholders who have devoted their lives to the institution.

The relationship of the partners to the governance of the firm has always been somewhat passive, and in the early days of the firm the need to interact may not have been as important. As the firm tried to move forward, however, leadership was more crucial and even more relevant was the active participation of the partners in the decisions-making process. A partner described the conundrum at H&B:

there was a degree to which the partners were not owners in the sense that they didn’t exercise or feel comfortable having responsibility, and had really delegated their individual stake to the control of somebody else who they viewed as their leader.

Leadership: boom or bust

In the beginning, the governance for H&B was conceived of as an Athenian democracy in which all partners had the opportunity to lead. Each time the management team

changed, however, the tone of the firm changed as well. In the early days of H&B, decentralized power was thought to be advantageous, preventing any one partner from becoming autocratic and any one department from taking control of the firm. The compensation committee was kept separate from governance in order to maintain fairness and equality among partners. Instead of a managing partner, the firm chose to select a management committee that consisted of four elected partners and a chairman elected by the partners serving on the management committee. The term of service on the management committee was four years, with a chairman elected for two years. In the '70s, this was changed to a four-year term for the chairman.

Only a handful of partners were actually interested in leading the firm. What was intended to be the governance responsibility of all partners became an albatross to some. Many elected not to encumber their daily activities with administrative responsibilities, preferring to spend time on their practice since the formula for salaries was dependent on the business they brought into the firm. Intangible efforts were not part of the compensation equation. One well-known litigator and senior partner in the firm confirmed this disposition: “While I have an excellent reputation for good lawyering, there’s one thing I [didn’t] do: administration. Big mistake from hindsight.”

Carl Sapers, the first four-year chair in 1979, was, in the words of one partner, “a force of nature”. As a partner during the initial merger, he brought with him the values and memories of an institutional culture. Most importantly, he was a partner deeply committed to that institution and touted as a mentor by several of the partners with whom we spoke. And although not everyone agreed with Sapers, it was said that he led the firm with fidelity to its values and goals. Richard Renehan, a senior partner, renowned litigator and a partner from the Peabody Koufman & Brewer firm at the time of the merger, also acknowledged the strength of the institutional cultural of H&B and how it had changed in the 90s.

Elliot Surkin, a protégé of Sapers, became chair of the management committee in 1987. By age 40, Surkin was already the dominant real estate lawyer in the city. As with many law firms, the partner with the most business success became a powerful entity in the firm. This was to be Surkin's role. By the '90s, a faction in the firm was neither content with the partners nor satisfied with the profits. They thought that the net profit per partner (NIPP) was being diminished by the less productive members of the firm, and that the firm's competitive edge was declining, which made it more difficult to recruit the best and brightest young lawyers. Not all partners agreed. One partner asserts the opposite:

The assumption is that a very, very well-paid excellent lawyer will choose to leave a place that they care about being, in order to become a very, very, very, very well-paid excellent lawyer. In other words, what we were motivated by was the sense that if we weren't meeting market for our best people, our best people would leave. And as soon as you start thinking that way, I think you've lost the essence of a law firm.

The power shift at H&B was slowly evolving; however, many partners remained disengaged. The routine of choosing the management committee and chair for the committee came into dispute after Dan Taylor's tenure as chair in 1999.

Gathering clouds

In 1999, the nominating committee chose Charles Dougherty to lead the firm into the new millennium. Although Dougherty's personal reputation among the partners was somewhat controversial, he was considered a good business lawyer and an appropriate choice for the managing partner position by members of the management committee. Unfortunately, Dougherty's "saturnine nature" and "lone wolf" style did not seem an appropriate choice to many of the partners. When the other partners were interviewed, approximately 30 of the 50 partners expressed concern about the decision to appoint Dougherty as the leader of the fractionalized and drifting institution; his nomination did not pass. At that point, Dan Taylor, the outgoing managing partner, encouraged Hale Andrews, who was interested in organizational and management issues, to become the managing partner. Andrews requested that Terry Mahoney, chair of the corporate department, co-manage with him. Mahoney was perceived as a creative and big picture type of person who would balance nicely the management style of Andrews. Mahoney accepted the offer and the co-management team began its tenure in 2000.

Mahoney and Andrews were aware that the partners and associates needed to refocus and reenergize their goals. Mahoney had read, *Built to Last: Successful Habits of Visionary Companies* by James C. Collins and Jerry I. Porras. He noted that one of the things that made companies great was that there was some principle that those in the business stood for, that before ever giving up that principle they would choose to go out of business. And the principle couldn't be about making money. Mahoney opened discussions to explore this idea with the management committee. What he learned was that there was no single idea that held H&B together anymore; the management committee could not agree on anything substantial. To make the situation a bit more tense, they were unimpressed with the discussion about principles and wanted to begin strategic planning to make H&B more profitable.

Changing the nature of the beast

By 2000, the growth of the firm had become the priority. Mahoney and Andrews inherited from Taylor a new compensation system that did away with the formula-based approach and moved to a judgment system, which rewarded non-economic contributions of partners and encouraged people to develop new areas of practice. Also, a business consultant suggested focusing practice groups around industries rather than legal areas, which they did, and suggested that there were too many lawyers. Of the 120 plus lawyers now in the firm, the consultant suggested there was work for 90 lawyers. Mahoney, whose new recruits in the corporate department had just begun to gain momentum, may have feared that those lawyers might be seen as unproductive or at least not generating enough profit to benefit the firm. In any case, the pending decisions on how to respond to the restructuring of department practice groups may have stressed the co-managers' relationship to such a degree that they were no longer able to come to consensus. As I have been able to reconstruct from the interviews, Andrews and Mahoney isolated themselves from each other. While Andrews took on the majority of the management details, Mahoney pulled away and focused on his practice.

Panic sets in

According to a partner who left shortly before the dissolution, during the change in management, two partners with substantial practices chose to leave H&B to make more money. Then a number of partners who were similarly situated said that they would leave if they weren't paid better, and then were disproportionately well-compensated. This concession became a telling moment for the firm.

A few weeks before the November 2000 partner retreat in which they intended to discuss issues of reorganization, Surkin, chair of the real estate group, spoke with Andrews and expressed concerns about the financial returns of the firm. He told Andrews that he had received an offer from Bingham Dana that could double or triple the earnings of the real estate group. Implicit in this discussion was Surkin's heightened concern about the economic future of H&B. This spark would soon ignite a tinderbox within the firm.

Andrews then told Gael Mahony and Joseph Steinfield, two senior partners in the litigation department and on the management committee at the time, about the conversation he had had with Surkin; this conversation deeply troubled them both. Mahony and Steinfield acknowledged that without the real estate group (approximately 23 partners), the firm might not survive. As a response to the growing threat posed by the real estate group's dissatisfactions, Hale Andrews and Terry Mahoney were given the responsibility of collecting payments for the end of the year accounting, and Dougherty, who did not have the full confidence of the partners, was encouraged to become managing partner and to take over the strategic planning for the November 2000 retreat.

At the November retreat, Charles Dougherty was officially made managing partner. His strong business orientation was a decisive decision for the firm. Both Hale Andrews and Terry Mahoney were no longer in the management loop and were sufficiently disheartened. Andrews left the firm in April 2001, and Terry Mahoney left in November 2001. Several other partners left in 2002. One partner came to his decision to leave by deciding whether the firm represented his values:

So either it's about money, in which case I'm being woefully underpaid because we're not doing very well, or it's about excellence in practice, in which case we're not aspiring to that anymore. And either way it's not right.

As another partner aptly described the governance of a law firm, “it was like managing cats”. The implication was that if one was running a multi-million dollar business, governance and leadership were important ingredients, and the “cats” had to be corralled. What seemed to get lost in the melée to recover profits was the necessity for abiding trust, loyalty, and commitment that would sustain a strategic business plan. H&B’s new leader had difficulty unifying his team around core values, while at the same time supporting a desire to increase profits and to stabilize their financial concerns.

The decision was made two years prior to the dissolution to reduce the “dead weight” in the firm. As a result, Dougherty fired four partners. This act catapulted the firm into a dizzying spiral of disparate partnership loyalties, a demoralizing sense of mistrust, deep governance conflicts, and even a deeper disengagement from the past goals of the firm.

In the words of one long-time former partner who did not agree with the bottom-line attitudes of many but who found himself agreeing with the decision:

They [the four partners] weren’t producing and their practices weren’t growing so people could use them. Hill and Barlow, like a lot of old line firms, prided itself on developing quality lawyers and not worrying about their business development. That was a luxury in the past year or so that people realized could no longer exist.

Most of the partners agreed that drastic measures were called for, and some thought that “more than four partners should be fired.” However, as one partner put it, firing the four partners was a “convulsive measure”:

They [his partners] believed that there had to be some convulsive change to bring the firm’s economic fortunes back in line with the other firms in the city. And partly because they were remarkably passive.

The result was indeed “convulsive”. The camaraderie among the partners that once defined H&B further decayed.

Dougherty also decided to empower the practice groups. As one partners reminisces:

First, Dougherty scrapped the old practice group system, reconfigured them and empowered practice groups to manage their own budgets, and make their own

decisions. In other words, the practice groups became business units within the larger firm/corporation, and each practice group had to generate its own business and money and was judged accordingly.

As a result of this reconfiguration, the competition among the practice groups escalated and the business mindset gained a stronger foothold.

Where have all the partners gone?

The partnership was being retuned to harmonize with a business strategy that would allow H&B to compete with the more successful regional firms and to increase the net profit per partner. The rationale for firing the partners was to prevent further deterioration and fleeing of more partners and to get H&B on a more profitable track. In concert with this retuning, Dougherty began to hire lateral partners from other firms who had neither a commitment to H&B nor a sense of the undertow threatening to destroy the solidity of the firm. But being a partner no longer offered immunity to losing a job and everyone began to realize that simple fact.

There were varying responses to the decision to fire the partners. Many in the firm felt it was a deed that had to be done; some felt that it was an example of H&B's lost soul, that the strength of the partnership and the rules of tenure no longer meant security for themselves or to the future. Instead, the partnership was dissolving based on a decision to approach the practice of law with an eye primarily towards profit-making and less towards the obligation to those in the past or to those considered "family" in the present. In the words of a partner who left prior to the dissolution, "for everyone in that place, that was a change [firing the partners]. And it was a sort of public pronouncement of the price we were willing to pay for our Net Income Per Partner." The pride of belonging to this esteemed firm was connected to the legacy of the past, not to the present.

The lines are drawn

There were three stances taken by different groups of partners, each representing a continuum of the profession's perspectives.

Realists: Preference for function over form

The first was supported by those who gave credence to the economic realities of the practice of law. First, that it was important to increase the firm's financial competitive edge in relation to other top national firms, that in order to survive, the firm had to restructure and refocus. Partners were expected to be rainmakers, productivity was measured by originating work, and the partnership per se was not the priority. The priority was the client base, to bring in greater profits for each partner, to pay top salaries, to recruit the very best lawyers, and to sharpen H&B's competitive edge. Partners were expendable if they refused or were unable to bring in the type of business that supported this effort. Their mantra was that a productive lawyer should not have his profits decreased and client base diminished because of the low output of a partner.

Pragmatists: Get this show on the road

The second stance included those partners who believed many of the same calculations made by the first group. The difference was that this group believed H&B did not have to compete with the Hale & Dorr, Bingham Dana, and Foley Hoag's of the world; that H&B had its own unique perspectives on responsibility and was loath to dismiss it for the sake of greater profits. Plus, the partnership was valued as one would value a friend. However, firing partners in order to maintain the financial stability of the firm was seen by some as "cutting off a few fingers to save the hand", a sad decision but a necessary one. This group did not buy into the fear that the best and brightest young associates would overlook H&B because it couldn't pay the highest salary, but they did accept that different styles of working (which meant hours worked) could no longer be tolerated.

Idealists: Unity of form and function

A third stance posed by several partners suggested that H&B was losing its way, that it was far more important to take "the practice of law seriously, than to make the business of law paramount". "Serious" to these lawyers meant doing the very best they could and not focusing on the bottom line, behaving in a responsible and ethical way toward the client, to society, and to the partners. The notion of partnership meant loyalty, common goals, and accepting that each partner had his/her own strengths and that there was a place in the firm for all. This explanation suggested that different work styles should be honored. You don't fire a partner in order to increase the profits of others; you use the

compensation structure to reward productive partners and to balance inequities in the hours worked.

Where once H&B shared a common vision among its partners, it now housed three opposing positions. Adapting to economic realities seemed for many the only avenue to follow, and that meant that other relationships were disposable and that alternative expectations were irrelevant.

The ethos of the firm, which was once unilaterally accepted by the partners, was in chaos. Under the current conditions, the benefit for some larger good was considered by some unacceptable. This shift in priorities was illustrated by the response of one partner to another:

In early May of 2000... the Judiciary Committee of the New Hampshire Representative decides...to impeach the Chief Justice. The Judiciary Committee asks Steinfield if he will be the counsel to the committee. Steinfield grew up in New Hampshire. So Steinfield calls me at home and tells me this. He says, "I can probably get paid 50%, 70% of this thing, but it's not going to be a full fee thing. But Jesus, I'd really like to do it. Can I do it?" And I say to him instantly, "Oh, for Christ's sake, yes that's what this firm exists to do and that's what being a lawyer is all about." In the course of the summer the amount of negative comment I got about that decision was immense. "Why the hell did you let Steinfield go off and do some God-damn thing where we're not going to get fully paid?"

It may well be that there are ways in which both the practice and the business of law can survive together, but there is no easy path, and partners within a law firm must have this as their common goal. While the real estate group claimed that H&B's fiscal insolvency was the main determining factor for their departure, they were not the only partners who saw economics as a driving force in the firm; nor were they the only group who forfeited the values associated with the partnership relationship.

Conclusion

While the editorials and the newspapers claimed that the real estate group left for “greener pastures”, and that greed and disloyalty were the primary cause for the dissolution, my study reveals a far more complex situation.

I have sought to demonstrate that the external forces such as. commercialization of the profession, internal and external competition and compensation pressures on the practice of law, have pushed law firms beyond the traditional boundaries of professional practice and into the realm of business and profit expectations. Despite the warnings and expressed trepidation of professionals in the field at each juncture—whether it was in opposition to adopt the structure of a professional corporation, worried about the affects of advertising as a means of getting more business, or a concern about billing by the hour to earn more money—the integrity of the profession seemed less a worry than was the desire to compete for greater wealth. Unlike business, however, the legal profession has a special responsibility in this society, and a unique place in our form of democracy.

At H&B, the shared institutional memory of service and sense of higher calling was the foundation on which service to others stood and from which the practice of law at H&B was anchored. By the early 90s, the firm struggled with economic factors as well as a diminished alignment among the partners between their goals and values. They could not reach consensus on what they would not compromise. H&B was caught in the midst of its own indecision; it could neither maintain the practice of the past, nor was it able to marshal its collective energies for a new era. Instead, partners floundered or were silent, were unable to communicate their concerns, and were frustrated by the misalignments of goals. They were saddened by the loss of commitment of those they had known for years, and were unaware of the shift in their own thinking.

The value of working together and the competitive thrust of individualism can be dueling catalysts in a market-driven society. The obligations of the legal profession, however, are too precious to be circumscribed by economic forces. Law should not be coterminous with business objectives; the latter are slowly depriving the profession of its willingness

to flex its more honorable muscle. Partnerships in the law are particularly vulnerable to the combination of external forces for a number of reasons. A partnership relies on trust, loyalties, and a set of common goals that provide meaning and motivation for its survival. Equally important is the fact that partnerships are a way of collaborating across generations and sharing common history, common goals and values, and educating the next generation in what is important to the profession and to society.

What is lost when a partnership like H&B folds? Law is about relationships—a way of affirming the rights and responsibilities that we, as a society, agree upon. Who we are as individuals gets translated from one generation to another by the actions we take. The commitments within a partnership are also about one professional's obligations to his/her partner and profession. When such responsibilities are ignored or broken essentially for monetary considerations, the relationship that binds the profession to society and one professional to another gets redefined. If loyalty, trust, common goals, a sense of excellence do not temper the pursuit for profit, the attitudes of future professionals will necessarily change as well, and in my opinion, not in the direction that will, in the long run, benefit the profession or society. I don't suggest to keep partnerships going just for their own sake. I do believe, however, that an understanding of their purpose and their benefits to the profession and to the larger society may help to preserve what was most precious in American legal practice during the 20th century.

Postscript

In August 2004, I sent **The closing of a great firm** to 13 Hill & Barlow partners as well as to several lawyers from other law communities. This postscript is in response to the thoughtful replies to this paper.

I am very grateful to all for the feedback both critical and complimentary. The wisdom and knowledge offered enriched my understanding of human nature and the law. I will try to respond to all the concerns and issues that were brought to my attention. Beyond corrections of typos, there were two categories of responses: (1) further explanations of Hill & Barlow facts i.e. the compensation system, timeline corrections, etc., and (2) additional perspectives on how to interpret the events of the past. The three members of the real estate group who I had interviewed did not comment on the paper.

The concerns about perspectives on the events of the past both specifically to H&B and more generally to the practice of law took several forms. One senior partner felt that the paper did not place enough responsibility for H&B's failure on the doorstep of the real estate group. He suggested that most of the other partners would have gone to any length to save the firm, that one partner in particular offered a passionate plea to keep the firm together, and that the culture of the firm remained strong. He also added that the litigation department produced a significant percentage of the firm's revenue and that the real estate group had no intention of staying with the firm.

Another partner emphasized that there was a profound "failure to communicate" prior to the December 2002 retreat, not just a "lack of communication." Several partners reiterated that the firm was "full of talent" and did not have to fail- the proof being that all the partners were hired by top law firms immediately after H&B closed its doors. Another partner suggested that H&B failed to develop areas such as technology and health care and that the firm did not affiliate with national firms, which was another poor management decision. Four partners felt that the H&B incorporation had nothing to do with the failed partnership, that it was merely a way to reduce a partner's liability. One senior partner stated that the greatest stress for H&B was the merger in 1965, and that all other changes, i.e. billable hours, incorporation, and the emphasis on business and

profitability were issues that stressed all firms, not just H&B. One respondent implored me to emphasize that the changes in the tradition of public-service remained strong among all partners except a few in the real estate group. And lastly, a senior partner corrected my understanding of the compensation system. He stated that the 20% was intended not only to help out those in need or to offer additional compensation for leadership roles in the firm, but also to distribute the profit “on a per capita basis” to satisfy both high producing partners and low producing partners.

It is clear that the dissolution of Hill & Barlow was and continues to be a deeply personal disappointment to many of the partners who lived and worked together for years and to those partners who were hired months before the firm’s demise. The frustrations of these supremely talented lawyers over friendships lost and betrayals felt did not escape my awareness. In the words of one partner: “...the business failed not just as a financial entity but as a human institution as well.” As a social scientist, my task has been to step back from the various events, to listen, to ask questions, and to examine what this failure, which was similar to others around the country, might tell us about the economic momentum and the practice of law. To do this, I used H&B as my guide.

From an historical perspective, each change in the regulations or standards for the practice of law i.e. to allow lawyers to incorporate, to market services through advertisements, to charge by the hour, etc, creates a response by some who worry about the legal implications and the ideals that could be lost. Gradually, these voices tend to get lost. With each revision, the landscape and the expectations of the law and those who practice it also change. After many years of refocusing and retooling to navigate market forces, law practices have begun to re-establish new values to coincide with greater economic possibilities. It is true that law has always been part business. What I believe it has become, is a lesser profession and that is cause for concern. Law has a special place in our society; it is a vital and indispensable basis for our democracy. And those who have the knowledge and skills to translate and dispense the law have a responsibility to that society.

Now back to Hill & Barlow. H&B tried to survive. There were plans to strengthen management, fire unproductive lawyers, bolster the corporate practices, give the practice groups domain over their own budgets, adjust the compensation formula to satisfy those who brought in more business, and hire lawyers with strong practices. The law firm did not go down without a struggle. However the tactical changes were not pursued in relation to the greatest strength of the firm--- its historic partnership and the values that that partnership brought into being, which were not focused on the business and profit of the law practice.

In the September 2004 ABA Journal article “Back from the Brink”, Jill Schachner Chanen wrote that one common theme among failed firms is the idea that “being the best was all it took to succeed.” Being the best does account for a lot. However, responses to change have as much to do with success as being the best. What form these responses take, however, depends on the will and priorities of those individuals in the firm. At H&B, not only had the culture of the firm changed over the years' there was also a diminution in the desire to band together and to pursue values other than sheer profit. Was this due to the ubiquitous changes in the law as discussed in the article? In part, yes. H&B’s noble history succumbed to the consequences of the profession’s broader transformation. In the words of one partner: “The bounties of democracy, and the sense that we at least controlled our own destinies, was lost, and replaced by systems and ideas that neither inspired more productivity nor much joy.”

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